

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOSEPH V. METOYER, JR. §  
VS. § CIVIL ACTION NO. 1:07-CV-848  
JEFFERSON COUNTY CORRECTIONAL §  
FACILITY

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Joseph V. Metoyer, Jr., a former prisoner, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition without prejudice to petitioner's ability to file a federal habeas petition after he exhausts available state court remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Although petitioner filed a number of pretrial motions and petitions for writ of mandamus, he did not follow the correct procedures for exhausting his claims in state court before he filed this petition. After his conviction, petitioner could have requested leave to

appeal, or he could have filed an application for state habeas relief pursuant to Texas Code of Criminal Procedure art. 11.07. Petitioner has not pursued either avenue of relief. Therefore, this petition should be dismissed for failure to exhaust state court remedies.

**ORDER**

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with this memorandum order.

So **ORDERED** and **SIGNED** this **28** day of **June, 2008**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge